

AO 243 (Rev. 2/95)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District <u>District of Massachusetts</u>
Name of Movant <u>Noel Hernandez</u>	Prisoner No. <u>25307-038</u>	Case No. <u>1:04CR-10319-003</u>
Place of Confinement <u>Low Security Correctional Institution, Allenwood, Lyscoming, ALA, t. Cube #40, P.O. Box-1000, White Deer, PA 17887</u>		

UNITED STATES OF AMERICA

v.

Noel Hernandez

(name under which convicted)

## MOTION

- Name and location of court which entered the judgment of conviction under attack + United States District Court District of Massachusetts 1 Court House Way Boston, MA 02210
- Date of judgment of conviction October 18, 2005
- Length of sentence 132 Months
- Nature of offense involved (all counts) 21 U.S.C. § 963 Conspiracy to Import Heroin  
21 U.S.C. § 952(a) Importation of Heroin  
18 U.S.C. § 2 Aiding and Abetting

5. What was your plea? (Check one)

(a) Not guilty ☒

(b) Guilty ☐

(c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

N/A Jury Trial

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury ☒

(b) Judge only ☐

7. Did you testify at the trial?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

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9. If you did appeal, answer the following:

- (a) Name of court United States Court Of Appeals First Circuit
- (b) Result Appellants conviction affirm
- (c) Date of result June 15, 2007 date of First Circuit decision

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court United States Supreme Court
- (2) Nature of proceeding On Petition For A Writ Of Certiorari To The First Circuit Court Of Appeals In The Supreme Court of The United States
- (3) Grounds raised Whether The Trial Court Impermissibly Constructively Amended The Indictment To permit The Jury To Convict Mr. Hernandez of an offense that had not been charged By The Grand Jury, (2) Abuse of Discretion, (3) Whether the Trial Court Erred in denying the defendants Motion To preclude The Government From Introducing Cell Phone Caller Location Records.
- (4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes ☐ No ☒
- (5) Result Writ Of Certiorari To The U.S. Supreme Court Denied
- (6) Date of result September - October 2007

(b) As to any second petition, application or motion give the same information:

- (1) Name of court N/A
- (2) Name of proceeding \_\_\_\_\_
- (3) Grounds raised N/A
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result

N/A

(6) Date of result

N/A

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. *Denied* Yes ☒ No ☐(2) Second petition, etc. *Denied* Yes ☒ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

*I Appealed!*

12. State concisely every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same. *NO Federal Offense Exist, There is no such thing as a*

*Federal Charge of Conspiracy nor any other offense, Court overstepped its authority.*

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

*Federal C.V. Procedure Rule 60(b)(4) the judgment is void. Statutory Speedy Trial Violations 18 U.S.C. § 3162 dismiss indictment with prejudice.*

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.



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- U.S. District Court Judge overstepping his authority being dysfunctional and in Abuse of discretion.
- † (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure. Warrant false No Writ issued.
  - † (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest. 4th Amendment Violations of Const.
  - (e) Conviction obtained by a violation of the privilege against self-incrimination.
  - † (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant. No Federal Procedure Rule 16 Standing Discovery as to jurisdiction.
  - (g) Conviction obtained by a violation of the protection against double jeopardy.
  - † (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled. Fed. R. 6 Violated.
  - † (i) Denial of effective assistance of counsel. Inadequate and Ineffective Counsel of Standing Discovery jurisdiction.
  - (j) Denial of right of appeal. There is no such thing as a conspiracy or any other Federal offense. Rule 16
- Standing Discovery. NO CONSPIRACY to import heroin and importation of heroin exist. Vacate Conviction.
- A. Ground one: U.S. Constitution 5th Amendment due process of law and equal

protection of law Violations of the Fundamental demands of due process of law in  
the fair administration of criminal justice, Const. Article I, section 9 violations and section 10, and  
Art. III, §2. Supporting FACTS (state briefly without citing cases or law): No Writ of habeas Corpus and prose-

quendum, a common law writ used to remove a prisoner for trial in  
the jurisdiction where the offense was committed. Carbo V. United States,  
364 U.S. 611 (1961); Ex parte Bollman, 4 Cranch 75 (1807) necessary writ  
before a prisoner may be removed or transferred. United States v. Mauro,

436 U.S. 340, 361-62 (1978) is not issued from U.S. District Court Judge or  
US Courts Supervision, Attorney Ineffective for not Filing Habeas Corpus for Immediate Release, Discovery in

B. Ground two: Federal Criminal Procedure Rule 16 Standing Discovery Violations by

U.S. District Court Magistrate and U.S. District Court Judge and U.S. and Assistant U.S.  
prosecutors and Defense Counsel being dysfunctional and also direct Appeals counsel ineffective at Appeal  
Supporting FACTS (state briefly without citing cases or law): Discovery is the sharing of evidence. Crim Rule

Violation before trial, U.S. District Court Magistrate Judge and U.S. District Court Judge

and U.S. Prosecutor and Assistant Prosecutors with Defense Counsel have forced  
defendant to trial without full and complete opportunity to have full and

Completed discovery and Motions filed and heard and without proper Grand Jury Fed. Crim.

Rule 6(b)(1) Challenge and without proper arraignment, Discovery Violations causes  
Conviction to be Vacated and Reversal. Immediate Release Noel Hernandez, Habeas corpus.

C. Ground three: Actual Innocence of Noel Hernandez, The absence of

facts that are prerequisites for the sentence given to Noel Hernandez.  
No Federal Jurisdiction and No Federal Criminal Offense exists. Judge overstepped his authority. Abuse of  
discretion. Supporting FACTS (state briefly without citing cases or law): Exculpatory evidence tending and

serving to clear Noel Hernandez of fault and guilt was concealed from jury

by Prosecutor misleading Trial Jury with a Flash of a Photo in his hand and

at trial a Lie misleading Trial Jury. Prosecutor lies and having Francisco Navarro  
give Trial Jury perjured testimony as to he being one of two men in photo  
in open U.S. District Court at trial to deceive and mislead Trial Jury to  
convict wrongfully and unlawfully Noel Hernandez with perjured testimony from

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Francisco Navarro and Prosecutor Flashing Photo of Noel Hernandez and his Boss Mr. James So Dysfunction and due process of law violation of the fundamental right of criminal justice by U.S. District Court Judge, U.S. and Ass. State U.S. prosecutors and defense counsel fabricating photo evidence with perjured testimony of Navarro at trial which was forced on Noel Hernandez without full discovery, Abuse of Process, D. Ground four: Court not competent where court not having proper jurisdiction over person or property issue, or to contract as a requirement, 28 U.S.C. § 2255 Motion to dismiss with prejudice Indictment, Federal Request for Noel Hernandez is Racially prejudicial. No custody for prosecution exists, No individual Bail hearing for Hernandez, *Zadvydas v. Davis*, 5. Ct., 2001 WL 720662 (6-28-2001) habeas violation Supporting FACTS (state briefly without citing cases or law) and Sixth Amendment Right To A

Speedy Trial Violated where that no issues by Federal U.S. District Court Judge of a Writ of habeas corpus ad prosequendum signed by Massachusetts Governor of The State. The Statutory Speedy Trial Rights of Noel Hernandez are Violated, Title 18 U.S.C. § 3162, 18-3163-18-3164 Violated and all sanctions, Dismiss Indictment With Prejudice and all False Charges and Immediately Release Noel Hernandez and grant him his right to apply for Citizenship in the United States of America, Dismiss also by order INS detainer.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: ALL The Grounds Presented 28 U.S.C. 2255 herein were not presented at the Pre-trial Habeas Corpus hearing and due process of law violations of Jurisdiction were not previously presented because of Ineffective Assistance of Counsel and

The U.S. District Court, U.S. Prosecutors, and Defense Attorneys being essentially dysfunctional and each attribute different Causes for the dysfunction where that Prosecution and Punishment on account of Noel Hernandez Race, Religion, Nationality, and Political opinions and is Prejudice for all these reasons to Hernandez affected by Prejudice Request, Abuse of discretion by Judge

14. Do you have any petition or appeal now pending in any court as to the judgment under attack? Abuse of discretion by Judge  
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

Peter C. Horstmann, Esq.

(a) At preliminary hearing 200 Berkeley Street, 16th Floor, Boston, Massachusetts 02116

(b) At arraignment and plea Same above

(c) At trial Same above

(d) At sentencing Same above



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(e) On appeal Susan E Taylor, Attorney at Law, 26 Seventh St.  
New Bedford, MA 02742

(f) In any post-conviction proceeding NIA

(g) On appeal from any adverse ruling in a post-conviction proceeding NIA

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

On more than one count of indictment  
sentenced to 132 months

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: NIA

(b) Give date and length of the above sentence: NIA

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒ NIA

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding. 28 U.S.C. 2255 Habeas Corpus  
Dismiss Indictment with Prejudice, Reversal and Vacate Sentence and Conviction and  
Immediately Release Noel Hernandez.

\_\_\_\_\_  
 Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

12-20-07

Date

12/20/07

Christine R. Vandine

Noel Hernandez

Signature of Movant

